

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-215138

DATE: July 30, 1984

MATTER OF: Cable Consultants, Inc.

DIGEST:

1. A bidder's failure to sign its bid may be waived as a minor informality when the bid is accompanied by other documents bearing the bidder's signature, such as a properly executed bid bond, which clearly evidence the bidder's intent to be bound by its submitted bid.
2. Although an irrevocable letter of credit in proper form may constitute an acceptable bid guarantee, it does not negate a bidder's failure to sign its bid in the same fashion as does a properly executed bid bond because it does not require the bidder's signature as a party to the instrument.

Cable Consultants, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DTFA06-84-B-50056, issued as a total small business set-aside by the Department of Transportation, Federal Aviation Administration (FAA). The project calls for the installation of underground cables and ducts at W.B. Hartsfield International Airport, Atlanta, Georgia. The FAA found Cable's low bid to be nonresponsive because the firm had failed to sign its bid, sign its bid bond, and acknowledge receipt of amendment No. 1 to the IFB. Although Cable admits failing to sign both its bid and bid bond, it asserts that its intent to be bound is evidenced by the fact that it submitted an irrevocable letter of credit from its bank in the amount of 20 percent of the bid price as required by the IFB. Additionally, Cable asserts that its failure to acknowledge the amendment was only a minor informality which the agency properly should have waived. We deny the protest.

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Page one of the IFB provided that all bidders were required to furnish a bid guarantee in the amount of 20 percent of their bid price if that price exceeded \$25,000. Bidders submitting guarantees in the form of bid bonds were required to furnish the original of a properly executed Standard Form (SF) 24, "Bid Bond," listing a surety or sureties acceptable to the government. Page two of the IFB provided that bid guarantees:

"shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or . . . certain bonds or notes of the United States."

The IFB was issued on March 20, 1984. Amendment No. 1 was issued on April 3, correcting the telephone number of the agency contact with whom bidders were to arrange pre-bid site inspections. Bids were opened on April 19, with Cable submitting the apparent low bid of \$39,400. The record establishes that Cable's bid was unsigned, that its bid bond was unexecuted and that Cable had failed to acknowledge receipt of amendment No. 1. In lieu of a bid bond, the firm's bid was accompanied by an irrevocable letter of credit from the First Georgia Bank in the amount of \$7,880, representing 20 percent of the firm's bid price. The letter of credit was addressed to the contracting agency and stated, in part:

"We hereby open our irrevocable letter of credit in your favor available by your drafts drawn on First Georgia Bank for account of Cable Consultants, Inc., at sight for any sums not exceeding in total \$7,880.00"

This instrument, which did not reference either the solicitation number or the proposed project, was signed only by an officer of the bank. Thus, no document included with the bid contained a signature of the bidder.

The FAA rejected Cable's bid as nonresponsive on April 25, on the ground that the bid did not offer sufficient evidence of an intent to be bound. Additionally, the FAA deemed the bid nonresponsive because Cable had failed to acknowledge receipt of the amendment. The agency awarded the contract to the second low bidder, but has not issued a notice to proceed with the work pending our resolution of the protest.

The proper preparation of its bid is a responsibility which clearly rests with the bidder so as to ensure that the contracting officer will accept it in full confidence that an enforceable contract will result. See Edcar Industries, Inc., B-212330, Nov. 4, 1983, 83-2 CPD ¶ 528. One element of such preparation is the bidder's signing of the bid document itself. However, there are certain situations when the bidder's failure to sign may be waived as a minor informality when other dispositive evidence accompanies the bid and demonstrates the bidder's intent to be bound by the bid submitted. Federal Procurement Regulations, 41 C.F.R. § 1-2.405(c), provides that such evidence may take the form of a bid guarantee, or a letter signed by the bidder clearly identifying the bid itself. In a similar vein, we have held that the presence of a properly executed bid bond may negate a bidder's failure to sign its bid. Mountain Cascade, Inc., B-211460, July 14, 1983, 83-2 CPD ¶ 93.

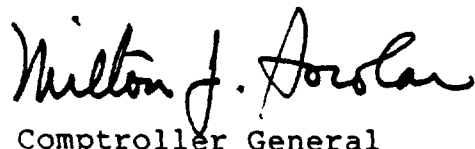
In this respect, Cable asserts that the irrevocable letter of credit it furnished with its bid as a bid guarantee is adequate evidence of its intent to be bound. The firm points out that the amount of the funds made available to the government under the letter was exactly 20 percent of its bid price, as required by the IFB, and urges that this instrument thus serves to obviate the firm's failure to sign its bid. We do not agree.

While a bid guarantee may take the form of an irrevocable letter of credit because it assures the government of access to funds should the bidder fail or refuse to execute required contractual documents or to provide payment or performance bonds, American Photographic Industries, Inc., B-209182, Jan. 26, 1983, 83-1 CPD ¶ 94, the letter of credit differs from a bid guarantee in that it does not require the bidder's signature to create a binding obligation. See 50 Am. Jur. 2d Letters of Credit, Etc. § 10 (1970); cf. 55 Comp. Gen. 427 (1975) (holding that an unsigned bid bond was acceptable when accompanied by a properly signed bid because the obligation created by the signed bid was sufficient to bind the surety). Thus, even though this instrument may have been acceptable as a bid guarantee, we do not think that it serves as evidence of a firm binding offer that would result in an enforceable contract if accepted by the government.

As the FAA correctly emphasizes, in the presence of all material contained in the bid package--the bid itself, the bid bond, and the letter of credit--there is simply no document signed by the bidder as demonstrative evidence of its intent to be bound. Without an appropriate signature of the bidder on some accompanying document, the bidder would not be bound upon the government's acceptance of its bid. See Inge Ellefson, B-212785, Sept. 2, 1983, 83-2 CPD ¶ 303. Thus, it is our view that the FAA acted properly in declining to waive Cable's failure to sign its bid as a minor informality despite the presence of an irrevocable letter of credit, and accordingly in rejecting the bid as nonresponsive.

Since Cable's bid is nonresponsive for this reason, we need not reach the remaining issues raised in the protest.

The protest is denied.

for 
Comptroller General
of the United States